

D.P.U. 91-233-D-1

Investigation by the Department of Public Utilities of Boston Edison Company's Second Annual Demand-Side Management Reconciliation Report and individual program reports and the Company's Conservation Charge.

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ORDER ON MOTION FOR CLARIFICATION

I. INTRODUCTION

On July 22, 1994, the Department of Public Utilities ("Department") issued its decision in Boston Edison Company, D.P.U. 91-233-D ("Order"), concerning Boston Edison Company's ("BECo" or "Company") Second Annual Reconciliation Report and supporting monitoring and evaluation reports which support the Company's request for incentive and lost base revenues. In the Order, the Department directed the Company to revise its energy and capacity savings estimates for the Large Commercial/Industrial Retrofit Program ("Large C/I Retrofit Program") and Multifamily Program and to submit the revised estimates to the Department in a compliance filing. Order at 30-31, 77. The Department also directed the Company to recalculate the Conservation Charge ("CC") rates resulting from changes in the Company's 1991 and 1992 incentive amounts and lost base revenues. Order at 79.

On July 26, 1994, the Company filed with the Department a Request for Clarification and Extension of Time to File Compliance Filing ("Company Motion"). The Company seeks clarification of the Department's Order regarding the requirements of the compliance filing in connection with the Large C/I Retrofit and the Multifamily Programs and the recalculation of the CC (Company Motion at 2-3). In addition, the Company requests that the Department defer the compliance filing required by the Order until seven days following the issuance of the requested clarification (id. at 3).

II. STANDARD OF REVIEW

The Department may clarify a matter in an order where an explanation of some confusing aspect of the order is required. Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. See, e.g., Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297, at 2, Supplemental Order (1976) ("Fitchburg"). Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Gas Company, D.P.U 93-60-D (1994); Berkshire Gas Company, D.P.U. 92-210-B (1993).

III. COMPANY REQUEST

As stated, above, the Company urges the Department to clarify three aspects of the Order: (1) the requirements of the compliance filing regarding the Large C/I Retrofit Program; (2) the recalculation of the CC; and (3) the requirements of the compliance filing regarding the Multifamily Program (Company Motion at 2-3). The Company asserts that in making the adjustment to the Large C/I Retrofit Program required by the Order, the Company cannot determine whether the overall 1991 realization rate is the most appropriate rate to use for 1992 savings (id. at 2). The Company claims that the 1991 data included one very large customer and many institutional customers who were transferred from the ENCORE program and whose realization rates were very low (id.). The Company further claims that such a customer mix is not reflected in the 1992 participants (id.). The Company

seeks clarification of whether the Order directs the Company to revise its savings estimates for this program by eliminating the effect of the large customer from the weighted average (id.). The Company also seeks clarification of whether the previous ENCORE participants should be eliminated from the institutional data points in order to derive more appropriate realization rates for the two segments of the Large C/I Retrofit Program in 1992 (id.).

In reference to the recalculation of the CC, the Company seeks clarification of whether the CC should be based only on the 1994 components of the charge or whether the Company should perform a complete reconciliation and include previous over/under collections of the CCs prior to 1994 (id.). The Company noted that if the Department does not require such a reconciliation now, the Company will reconcile the CCs as part of the next scheduled annual filing in February, 1995 (id.).

The Company also seeks clarification of whether the Department intended the adjustment to the Multifamily Program results to be included as part of the compliance filing (id.). The Company noted that an alternative is to include the adjustments in the next scheduled CC filing in February, 1995 (id.).

IV. ANALYSIS AND FINDINGS

A. Large C/I Retrofit Program

In the Order, the Department directs the Company to apply the specified realization rate, which is based on 1991 data, to the savings estimates reviewed in the Order. Order at 30-31. The Company seeks clarification of whether the specified realization rate should be applied to savings estimates covering 1991 and 1992 installations for the Large C/I Retrofit

Program (Company Motion at 2). The Department finds that the Order was sufficiently ambiguous as to which savings estimates the Company should apply the realization rate. Therefore, the Department will clarify this aspect of the Order.

In the Company Motion, the Company questioned whether it is appropriate to apply the 1991 realization rate to the 1992 savings estimates, because the customers who participated in the program in 1991 and 1992 are very different (Company Motion at 2). The Department notes that a final realization rate will be applied to 1992 participants upon approval of the Company's second true-up for 1992. Therefore, the Department finds that the second true-up, not the compliance filing, is the appropriate forum to consider the treatment of the different customer mix for 1992 participants. Accordingly, for the compliance filing, the Department directs the Company to not remove the large customer and previous ENCORE participants from the calculations. Moreover, the Department clarifies that implicit in the Department's directive to recalculate savings is a directive to apply those recalculations to a recalculation of lost base revenues and incentives, where applicable.

B. Conservation Charges

In the Order, the Department directed the Company to recalculate the incentives and lost base revenues for 1991 and 1992 where the Department has directed re-calculations of savings estimates, as well as recalculate the CC rates resulting from such changes. Order at 79. In the Company Motion, the Company questioned whether the CCs should be based only on the 1994 components of the CCs or whether a complete reconciliation should be performed (Company Motion at 2). The Department finds that the Order was sufficiently

ambiguous to warrant clarification of this point. The Department intended the Company to perform a complete reconciliation of the CCs during the ensuing quarterly fuel charge modification. In its compliance filing, the Company should develop revised CCs based on all aspects of the Order. At that time, the Department will rule as to whether the revised CCs should replace the existing CCs.

C. Multifamily Program

In the Order, the Department directed the Company to reconcile the results of the 1991 Multifamily Program implementation with the realization rates developed for the 1992 Multifamily Program implementation, assuming that they are found to be statistically significant. Order at 77. In the Company Motion, the Company questioned whether the Department intended the adjustment to the Multifamily Program results be included as part of the Compliance Filing (Company Motion at 2). The Department finds that the Order is sufficiently ambiguous to warrant clarification of this point. The Company should base the compliance filing on the proposed savings estimates, as found in the original filing, until the Department can determine within the Department's review of the Company's Third Annual Demand-Side Management Reconciliation Report the validity of the realization rate applied to the 1992 Multifamily Program implementation.

V. ORDER

Accordingly, after due consideration, it is hereby

ORDERED: That Boston Edison Company's Request for Clarification be and hereby is granted;

FURTHER ORDERED: That Boston Edison Company's Request for Extension of Time to File Compliance Filing be and hereby is granted in part. Boston Edison Company shall make a Compliance Filing, consistent with the clarifications contained herein, by August 3, 1994.

By Order of the Department,

Barbara Kates-Garnick, Commissioner

Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).